

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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12 JULIE A. SU¹, Acting Secretary
13 of Labor, United States
14 Department of Labor,

15 No. 2:22-cv-00583 WBS AC

16 Plaintiff,

17 v.

18 SL ONE GLOBAL, INC., dba VIVA
19 SUPERMARKET, a California
20 corporation; SMF GLOBAL, INC.
21 dba VIVA SUPERMARKET, a
22 California corporation, NARI
23 TRADING, INC., dba VIVA
SUPERMARKET; UNI FOODS, INC.,
dba VIVA SUPERMARKET, a
California corporation; SEAN
LOLOEE, an individual, and as
owner and managing agent of the
Corporate Defendants; and KARLA
MONTOYA, an individual, and
managing agent of the Corporate
Defendants,

24 Defendants.

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27 ¹ Pursuant to Federal Rule of Civil Procedure 25(d),
28 Acting Secretary of Labor Julie A. Su has been substituted for
former Secretary of Labor Martin J. Walsh.

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2 SEAN LOLOEE; SL ONE GLOBAL,
3 INC. dba VIVA SUPERMARKET; SMF
4 GLOBAL, INC. dba VIVA
5 SUPERMARKET; NARI TRADING, INC.
6 dba VIVA SUPERMARKET; and UNI
7 FOODS, INC.,

8 Counter-Claimants,

9 v.

10 UNITED STATES DEPARTMENT OF
11 LABOR; and VERONICA VILLAMOR,

12 Counter-Defendants.

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15 Plaintiff Julie A. Su, in her capacity as Acting
16 Secretary of the United States Department of Labor, brings this
17 action against defendants SL One Global, SMF Global, Nari
18 Trading, and Uni Foods, all of which allegedly do business as
19 Viva Supermarket (the "corporate defendants"); Sean Loloe; and
20 Karla Montoya, alleging various ongoing violations of federal
21 labor laws at grocery stores operated by defendants. (Second Am.
22 Compl. (Docket No. 46).)

23 Sean Loloe and the corporate defendants brought two
24 counterclaims against the United States Department of Labor and
25 Veronica Villamor. The first counterclaim is brought pursuant to
Bivens v. Six Unknown Named Agents of Federal Bureau of
Narcotics, 403 U.S. 388 (1971), alleging that Villamor and other
26 Department of Labor employees engaged in a politically-motivated
27 investigation of Loloe that involved unwarranted searches and
28 seizures in violation of Loloe's Fourth Amendment rights. The
second counterclaim is brought under the Freedom of Information

1 Act ("FOIA"), 5 U.S.C. § 552, alleging that the Department of
2 Labor failed to produce documents responsive to counterclaimants'
3 FOIA request. (Docket No. 48.) Counter-defendant United States
4 Department of Labor now moves to dismiss both counterclaims, or
5 in the alternative moves for summary judgment on the FOIA
6 counterclaim. (Docket No. 51.)²

7 Federal Rule of Civil Procedure 12(b)(6) allows for
8 dismissal when a complaint or counterclaim fails to state a claim
9 upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6);
10 Levitt v. Yelp! Inc., 765 F.3d 1123, 1135 (9th Cir. 2014). The
11 inquiry before the court is whether, accepting the allegations in
12 the counterclaim as true and drawing all reasonable inferences in
13 the plaintiff's favor, the counterclaim has stated "a claim to
14 relief that is plausible on its face." See Bell Atl. Corp. v.
15 Twombly, 550 U.S. 544, 570 (2007); Levitt, 765 F.3d at 1135.

16 Loloee and the corporate defendants bring their
17 counterclaims against new parties, namely the United States
18 Department of Labor and Veronica Villamor, rather than plaintiff
19 Julie Su.³ This is procedurally improper, as a counterclaim

20 ² The court does not recite a full background of the case
21 as it has done so in a prior order. (See Docket No. 17.)

22 ³ Loloee and the corporate defendants argue that Acting
23 Secretary of Labor Julie Su is "not distinguishable" from the
24 Department of Labor. (See Opp'n at 7.) While they are correct
25 in a practical sense -- this action is being litigated using the
resources and personnel of the Department of Labor -- there are
numerous contexts in which it is necessary to make the
formalistic distinction between an agency head and the agency
itself for pleading purposes.

26 As relevant here, it is necessary to distinguish
27 between the Secretary of Labor and the Department of Labor in the
28 context of a FOIA claim, which must be brought against a federal
agency, not against federal officials. See Drake v. Obama, 664

1 cannot be asserted solely against new parties, but rather must
 2 also be asserted against an existing opposing party. See Fed. R.
 3 Civ. P. 13; Championship Prop. LLC v. Coan, No. 20-13728, 2022 WL
 4 4455208, at *5 (11th Cir. Sept. 26, 2022) (citing Bowling v. U.S.
 5 Bank Nat'l Ass'n, 963 F.3d 1030, 1032 (11th Cir. 2020))
 6 (explaining that where defendants brought purported
 7 "counterclaims" against new parties only and not against the
 8 original plaintiff, "the 'counterclaims' weren't really
 9 counterclaims at all"); Luma Pictures, Inc. v. Betuel, No. 16-cv-
 10 2625 GW PLA, 2016 WL 11519331, at *6 n.4 (C.D. Cal. Sept. 29,
 11 2016) (citing William W. Schwarzer et al., Cal. Prac. Guide: Fed.
 12 Civ. Proc. Before Trial § 8:1217 (2012)) ("at least one of the
 13 parties" the counterclaim is asserted against "must be an
 14 opposing party"); Hawkins v. Berkeley Unified Sch. Dist., 250
 15 F.R.D. 459, 462 (N.D. Cal. 2008) (quoting 6 Charles A. Wright et
 16 al., Fed. Prac. & Proc. Civ. § 1435, at 270-71 (2d ed. 1990)) ("A
 17 Rule 13(h) 'counterclaim or cross-claim may not be directed
 18 solely against persons who are not already parties to the
 19 original action but must involve at least one existing party.'")
 20 This defect is fatal to both the FOIA and Bivens counterclaims.

21 F.3d 774, 785-86 (9th Cir. 2011) (affirming dismissal of FOIA
 22 claims because defendants were "individuals, not agencies"); see
also Button v. Evers, 598 F.3d 169, 173 n.1 (5th Cir. 2010)
 23 (cited with approval in Drake, 664 F.3d at 786) ("A FOIA
 24 plaintiff may not assert a claim against an individual federal
 25 official; the proper defendant is the agency."); Martinez v.
Bureau of Prisons, 444 F.3d 620, 624 (D.C. Cir. 2006) (cited with
 26 approval in Drake, 664 F.3d at 786) ("[T]he district court
 27 properly dismissed the named individual defendants because no
 28 cause of action exists that would entitle appellant to relief
 from them under . . . FOIA," which "concern[s] the obligations of
 agencies as distinct from individual employees in those
 agencies").

1 | See Hawkins, 250 F.R.D. at 463.

2 IT IS THEREFORE ORDERED that counter-defendant
3 Department of Labor's motion to dismiss (Docket No. 51) be, and
4 hereby is, GRANTED as to both counterclaims.⁴

5 || Dated: April 4, 2023

William H. Shubert

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

4 Because the court grants the Department of Labor's
27 motion to dismiss the counterclaims, it need not address its
28 alternative motion for summary judgment on those counterclaims.